

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2834 of 1988

WITH

SPECIAL CIVIL APPLICATION NO.2840 OF 1988

WITH

SPECIAL CIVIL APPLICATION NO.2207 OF 1996

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

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2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil
Judge? No

SHANKERBHAI T PATEL

Versus

STATE OF GUJARAT

Appearance:

Shri V.J.Desai, Advocate, for the Petitioner (in
all matters).

Shri A.G.Uraizee, Assistant Government Pleader,
for Respondents Nos.1 & 2 (in all matters).

Smt. K.A.Mehta, Advocate, for Respondents Nos.3
& 4 (in Special Civil Application No.2834 of
1988).

CORAM: MR.JUSTICE A.N.DIVECHA

ORAL JUDGEMENT

The same order passed by the Competent Authority at Surat (respondent No.2 herein in each petition) on 13th July 1984 as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (the Appellate Authority for convenience) on 27th January 1988 in Appeal No.Surat-1244 of 1984 is under challenge in all these three petitions. Common questions of law and fact are found arising in all these three petitions. I have therefore thought it fit to dispose of all these three petitions by this common judgment of mine.

2. The petitioner in Special Civil Application No.2834 of 1988 (the First Petition for convenience) filed his declaration in the prescribed form under Section 6 (1) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) with respect to his holding within the urban agglomeration of Surat. That form was duly processed by respondent No.2. After observing necessary formalities, by his order passed on 13th July 1984 under Section 8 (4) of the Act, respondent No.2 declared the holding of the petitioner of the First Petition to be in excess of the ceiling limit by 3990.76.11 square metres. Its copy is at Annexure-A thereto. The aggrieved petitioner carried the matter in appeal before the Appellate Authority under Section 33 of the Act. It came to be registered as Appeal No.Surat-1244 of 1984. By the order passed on 27th January 1988 in the aforesaid appeal, the Appellate Authority dismissed it. Its copy is at Annexure-B thereto. The aggrieved petitioner has thereupon approached this court by means of the First Petition under Article 227 of the Constitution of India for questioning the correctness of the order at Annexure-A thereto as affirmed in appeal by the appellate order at Annexure-B thereto.

3. It appears that the petitioner of the First Petition did show in his declaration under Section 6 (1) of the Act that certain parcels of land were leased out to Messrs Mahesh Textiles and certain parcels of land were leased out to Shri Girishchandra Shankarlal Patel. Since these tenants were not heard in the matter, they have also approached this court by means of Special Civil Applications Nos.2840 of 1988 (the Second Petition for convenience) and 2207 of 1996 (the Third Petition for convenience) respectively. Both the tenants have

challenged the very same order at Annexure-A to the First Petition as affirmed in appeal by the order at Annexure-B to the First Petition. These orders are also at Annexures-A and B to the Second and the Third Petitions.

4. So far as the First Petition is concerned, learned Advocate Shri Desai for the petitioner is right in his submission that the constructed house property ought to have been excluded from the holding of the petitioner in view of the binding ruling of the Supreme Court in the case of MEERA GUPTA v. STATE OF WEST BENGAL reported in AIR 1992 Supreme Court at page 1567. It transpires from the impugned order at Annexure-B to each petition that the house property being a house in Shradha Cooperative Housing Society has been included in the holding of the petitioner of the First Petition. It ought to have been excluded from his holding.// It cannot be gainsaid that tenants of the lands appearing in the declaration in the prescribed form would be interested persons. Rule 5 of the Urban Land (Ceiling and Regulation) Rules, 1976 (the Rules for brief) framed under the Act requires service of the Draft Statement together with the Notice under sub-section (3) of Section 8 of the Act to all interested persons. As pointed out hereinabove, the tenants of the lands shown in the declaration in the prescribed form under Section 6 (1) of the Act would be interested persons. It is an admitted position on record that the petitioners of the Second and the Third Petitions were not served with any Notice under Section 8 (3) of the Act together with the Draft Statement as required by Rule 5 of the Rules. The impugned orders at Annexures-A and B to each petition can therefore be said to be in contravention of principles of natural justice qua the petitioners of the Second and the Third Petitions. They cannot be sustained in law qua them.

5. Since the petitioners of the Second and the Third Petitions were not served with the Notice and the Draft Statement and since the impugned orders at Annexures-A and B to each petition have to be quashed and set aside on that ground, I think the petitioner of the First Petition should also get an opportunity to have his further say in the matter as the lands shown in the declaration in the prescribed form belong to him. The impugned orders at Annexures-A and B to each petition will have therefore to be quashed and set aside. The matter will have to be remanded to respondent No.2 for restoration of the proceeding to file and for his fresh decision according to law after serving the Draft Statement and the Notice under Section 8 (3) of the Act

to all the concerned parties including the petitioners of the Second and the Third Petitions.

6. In the result, all these three petitions are accepted. The order passed by the Competent Authority at Surat (respondent No.2 herein) on 13th July 1984 at Annexure-A to each petition as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad on 27th January 1988 at Annexure-B to each petition is quashed and set aside. The matter is remanded to respondent No.2 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute in each petition with no order as to costs.

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